

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	

**COMMENTS OF THE  
NATIONAL HISPANIC MEDIA COALITION (“NHMC”)**

January 25, 2013

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## SUMMARY

The upcoming broadcast television spectrum incentive auction will create unique challenges for Latinos and other communities of color. During the process, a significant number of broadcast stations, that are owned by or serve people of color, could exit the market driving broadcast ownership diversity even lower than it is today. With limited opportunities to purchase reclaimed spectrum, due to significant market entry barriers, people of color could all but disappear from ownership and management roles in the nation's most important media and telecommunications industries, thus being relegated to the role of consumers with no hope of fully harnessing the economic opportunities that these services hold. With this in mind, the Commission should consider the impact of each stage of the auction on women, communities of color, and the poor, so that it may immediately recognize any harms resulting from the execution of the process and take swift steps to remedy them.

In designing the process that will be used to transfer spectrum from television broadcasters to mobile broadband providers, the reverse auction, the Commission should not only make it easy for broadcasters to give up their spectrum licenses, but also to keep them, if they so choose. The entire process should be transparent and efforts should be made to provide a constant stream of unbiased information to all broadcasters, and particularly smaller ones that may not be able to afford their own specialists or consultants. During the reverse auction, the Commission should continue its renewed efforts to maintain accurate broadcast ownership data by collecting ownership information from auction participants and releasing a report detailing the impact of the auction on broadcast ownership diversity as soon as possible. Finally, the Commission should not, for the sake of expedience, allow remaining broadcasters to permanently sustain post-auction media ownership combinations in contravention of existing Commission rules. Rather, the Commission should review these combinations upon completion

of the auction process, on a case-by-case basis, to determine, with public input, whether or not they serve the public interest.

During the sale of reclaimed spectrum to mobile broadband providers, or the forward auction, the FCC should promote competition and create opportunities for people of color. The Commission should recognize that, while bidding credits could increase participation of smaller competitors, and thereby increase competition in the market, it is less clear whether they will lead to increased ownership opportunities for women and people of color. Women and people of color are already at a severe disadvantage when it comes to the allocation of spectrum licenses. This auction could make that worse, not better. With this in mind, the Commission should endeavor to find other ways for this process to benefit communities of color. One possibility is to take steps to maximize the amount of unlicensed spectrum available after the auction, so that communities across the country could take advantage of lower barriers to entry and experiment with new ways to control their own communications networks. Another is to design the auction in a way that will increase competition in the market, not stifle it, so all can benefit from the lower prices and better service that would result.

Finally, NHMC urges the Commission to strive for transparency and limit any negative impact that the repacking and transition process, during which remaining broadcasters will be assigned new frequencies and channels, may have on communities, or the broadcasters that continue to serve them. Given broadcasters' pervasive penetration rates in underserved communities, like people of color and the poor, the FCC should take care that it does not unintentionally induce niche broadcasters, that are inclined to stay on the air, to relinquish their spectrum due to a fear of negative, post-auction effects on their businesses. The Commission should make sure that each broadcasters' audience is preserved by educating the public about the

impacts that the auction will have on their service and by making every effort to protect pre-auction coverage areas. In this instance, keeping broadcasters on the air is a direct service to the communities that they serve. The mass exodus of these broadcasters from the market would severely harm the public interest and communities across the country.

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The National Hispanic Media Coalition (“NHMC”) respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking seeking input on a number of proposals put forth to execute the authority granted to it by Congress to carry out a complex broadcast television spectrum incentive auction.<sup>1</sup> During this first of its kind process, the Commission will have to make extraordinary efforts to account for how the post-auction media and telecommunications landscape impacts communities’ abilities to sate their critical information needs.

**BACKGROUND**

Communities of color are facing a communications and information crisis in this country: Our critical information needs are not being sufficiently met by the current system.<sup>2</sup> And we have been frozen out of ownership stakes in the relevant industries, making it very difficult for us to effect positive change.<sup>3</sup> Even the most basic assumption made by Congress in directing the

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<sup>1</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking, (rel. Oct. 2, 2012) (“NPRM”); See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (“Spectrum Act”).

<sup>2</sup> Lewis Friedland, et al., *Review of the Literature Regarding Critical Information Needs of the American Public*, (July 16, 2012), available at [http://transition.fcc.gov/bureaus/ocbo/Final\\_Literature\\_Review.pdf](http://transition.fcc.gov/bureaus/ocbo/Final_Literature_Review.pdf).

<sup>3</sup> See 2010 Quadrennial Regulatory Review – *Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*,

Commission to carry out this process, that certain spectrum is more efficiently and effectively utilized in the hands of mobile broadband providers than television broadcasters, is open to debate. For instance, consider the penetration rates and relative prices of the respective services. Whereas the Latino community's usage of smartphones, a necessary tool for meaningful access to mobile broadband, has crept towards 50 percent penetration, television has maintained a penetration rate near 98 percent nationwide for decades.<sup>4</sup> In fact, 23 percent of Latinos rely exclusively on over-the-air ("OTA") signals to receive television programming – *in some markets this number approaches 40 percent* – making the potential for disruption much greater for these communities.<sup>5</sup> Many in the Latino community rely on OTA television service to access important information. The penetration disparity is partially due to cost – OTA television service is free while mobile broadband service can cost hundreds to thousands of dollars per year.<sup>6</sup>

Unquestionably, both broadcast television and mobile broadband are incredibly important to communities of color, yet opportunities for people of color to own these services are severely lacking. The Commission itself has recognized that broadcast ownership levels by women and people of color are "dismal."<sup>7</sup> Although the Commission has recently renewed its efforts to collect and release up-to-date ownership data, its most recent report did not encourage

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MB Docket Nos. 09-182, 07-294, Report on Ownership of Commercial Broadcast Stations (rel. Nov. 14, 2012) ("2012 Ownership Report").

<sup>4</sup> Lee Rainie, *Two-thirds of young adults and those with higher income are smartphone owners*, Pew Research Center, 2 (September 2012); *TV Basics*, TVB, (July 2012), available at [http://www.tvb.org/media/file/TV\\_Basics.pdf](http://www.tvb.org/media/file/TV_Basics.pdf).

<sup>5</sup> Knowledge Networks, *2011 Home Technology Monitor Survey*, Jan. 2011; The Nielsen Company, *Nielsen Local Television Market Universe Estimates: Hispanic or Latino TV Homes*, (January 1, 2012).

<sup>6</sup> See, e.g. Jaime Rivera, Total cost of ownership for an iPhone 5 is \$1,800, *Pocket Now* (October 3, 2012), available at <http://pocketnow.com/2012/10/03/the-total-for-an-iphone-5-is-1800>.

<sup>7</sup> *Promoting Diversification of Ownership*, Report and Order and 4th FNPRM, 24 FCC Rcd 5896, 5997 (2009).

optimism.<sup>8</sup> For instance, the recent report revealed that, in 2011, despite making up more than 16 percent of the population, Latinos owned only 39 out of 1,348 full power commercial television stations, a mere 2.9 percent.<sup>9</sup> Ownership of low power television stations by Latinos was slightly higher at 9.6 percent ,and growing, indicating that low power television could be a viable market entry point for our community.<sup>10</sup>

Further, the few stations that are owned by people of color often face significant competitive challenges. A recent analysis of Commission data reveals that people of color frequently own smaller outlets in large markets with 46 percent of stations owned by people of color located outside of the top four ranked stations in the largest 20 Designated Market Areas.<sup>11</sup> According to the same analysis, people of color are often single owners in markets with widespread consolidation, making financial distress much more likely and creating pressure to exit the market.<sup>12</sup>

**I. The Commission Should Ensure That The Reverse Auction Process Is Transparent And That Efforts Are Made To Promote Diversity And Protect The Public Interest During And After The Auction**

The Commission should design the reverse auction to be consistent with its other statutory obligations such as promoting ownership diversity and serving the public interest.<sup>13</sup> NHMC fears that the precarious situation faced by many diverse broadcasters makes it likely that some of these owners will choose to relinquish their spectrum rights and exit the market. NHMC does not think that these owners should be denied the right to participate in the auction. Rather,

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<sup>8</sup> 2012 Ownership Report.

<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *Id.* at 44.

<sup>11</sup> Comments of Free Press, MB Docket Nos. 09-182, 07-294, filed December 21, 2012, available at <http://apps.fcc.gov/ecfs/document/view?id=7022089263> (“Comments of Free Press”).

<sup>12</sup> Comments of Free Press at 17-23.

<sup>13</sup> *See, e.g.* 47 U.S.C. § 257; 47 U.S.C. § 309(j).



the Commission should make efforts to ensure that all choices to participate are well informed. Also, the Commission should collect data during the process that will allow it to build a record for future discussions about ownership diversity. To that end, NHMC offers a number of recommendations, which are wholly consistent with the Commission's obligations under the Spectrum Act.

As noted above, women and people of color own strikingly few broadcast television stations. When these numbers are considered in the context of this auction, it is difficult to imagine a scenario in which broadcasters of color *do not* exit the market. For instance, it has become clear that larger and more profitable broadcast owners are unlikely to participate in the auction.<sup>14</sup> If this holds true, it will be necessary for smaller owners in large markets participate, so that the Commission may free up spectrum and generate revenue. Women and people of color are also far more likely to own stations outside of the top four in the top 20 markets, are more likely to be small or independent owners, and face financial distress at a higher rate, making them strong candidates for auction participation.<sup>15</sup> If even a handful of these stations choose to participate, broadcast ownership by women and people of color would drop precipitously.

Further, if there is tepid participation in the reverse auction, and many stations remain to repack at its conclusion, very little room will remain for existing low power television outlets. These outlets have proven to be a possible entry point for owners of color and often offer unique services to their communities. As the Commission recognizes in the NPRM “[l]ow power television stations are a source of diverse and local television programming.”<sup>16</sup> Unfortunately for

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<sup>14</sup> See, e.g. John Eggerton, CBS Plans to Keep Its Spectrum, *Broadcasting & Cable* (April 29, 2011), available at [http://www.broadcastingcable.com/article/467494/CBS\\_Plans\\_To\\_Keep\\_Its\\_Spectrum.php](http://www.broadcastingcable.com/article/467494/CBS_Plans_To_Keep_Its_Spectrum.php).

<sup>15</sup> See Comments of Free Press.

<sup>16</sup> NPRM at ¶ 358.

these owners, low power stations will only receive “secondary interference protection” after the auction, meaning that any low power station that interferes with a repacked full power or Class A station will have to “relocate” or “discontinue operations altogether.”<sup>17</sup> The Commission notes that relocation possibilities will be very limited meaning that many of these stations could be forced off the air.<sup>18</sup>

In order to ensure that participation decisions are well informed, the Commission should avoid creating any real or perceived burdens for broadcasters who want to continue to serve their communities. The Commission must design a process that favors transparency and ensures that information is transmitted to broadcasters early and often. The Commission has already initiated this process through its LEARN program.<sup>19</sup> The Commission should continue to improve upon LEARN and make sure that the program is adaptable so that it can serve interested parties throughout the various auction stages. Particularly, the Commission should make special efforts to reach out to smaller broadcasters who may be weighing participation. Many of the owners of these stations cannot afford specialized counsel on this issue and would benefit from this type of interaction. Outreach to these outlets should contain unbiased materials intended to inform station owners, not encourage participation.

Next, the Commission should collect ownership data from stations participating in the reverse auction. In the NPRM, the Commission asks what type of information it should collect from auction participants.<sup>20</sup> NHMC strongly urges the Commission to collect the same ownership information required by Biennial Ownership Report Forms 323 and 323-E. The data

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Incentive Auctions – LEARN, Federal Communications Commission, <http://wireless.fcc.gov/incentiveauctions/learn-program/index.html>.

<sup>20</sup> NPRM at ¶ 247.

obtained through this type of collection will allow the Commission to analyze ownership information in a manner consistent with established practices and make trend analysis possible. Without collecting this data and standardizing it with the recurring Form 323 reporting, the Commission could completely undermine the Form 323 data collection process and render its data useless. Immediately after the auction, the broadcast landscape could be very different and, without data that reflects post-auction realities, the Commission will be unable to complete future Quadrennial Regulatory Reviews of media ownership rules or enact other ownership diversity policies.

Using the data collected during the reverse auction, the Commission should release a report assessing the auction's impact on broadcast ownership diversity. In the report, the Commission should answer questions such as: how many and what percentage of diverse owners participated in the auction; how did the auction impact access to free, OTA television services; how did the auction impact access to culturally relevant information during and after the transition; and how did the auction impact communities' abilities to satisfy critical information needs? The Commission should release this report as soon as possible. Further, the Commission should release an update to its 2012 Ownership Report that contains both auction data and Form 323 data and attempts to discern emerging trends. These reports, along with other comprehensive studies on ownership diversity, will allow the Commission and interested stakeholders to fully analyze the broadcast ownership landscape in advance of upcoming Quadrennial Regulatory Reviews of media ownership rules.

Finally, in the NPRM, the Commission proposes permanently grandfathering in ownership combinations that violate its media ownership rules as a result of a diminished post-

reverse auction broadcast television market.<sup>21</sup> The Commission should not preemptively build potentially harmful, pro-consolidation policies into the auction process as they could result in irreparable harm to broadcast ownership diversity. If the number of voices in a given market shrinks as a result of this auction, allowing existing combinations to remain would increase the overall consolidation of certain markets and make it much more difficult, or even impossible, for new entrants to enter or smaller, remaining outlets to compete. By allowing such consolidation without analyzing its impact, the Commission would be foreclosing future opportunities for new diverse owners and could drive even more from the market. Instead, the Commission should review these combinations, on a case-by-case basis, upon completion of the auction process. In doing so, the Commission can thoroughly consider the consequences of allowing such combinations and determine, with public input, whether or not they serve the public interest and support the Commission's other longstanding goals, such as promoting ownership diversity.

## **II. The Commission Should Design The Forward Auction In A Way That Promotes Competition And Creates Opportunities For Communities Of Color**

NHMC urges the Commission to design the forward auction in a way that will benefit consumers, and particularly people of color who have traditionally been unable to participate as owners in this space. Two ways to promote pro-consumer outcomes are to facilitate distribution of spectrum licenses in a pro-competitive way and to maximize the amount of spectrum freed up for unlicensed use. While bidding credits, as proposed by the Commission, could increase overall competition in the space, it is unclear whether they are sufficient to increase participation of firms owned by women or people of color in the forward auction.

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<sup>21</sup> NPRM at ¶ 356.

NHMC believes that robust competition in the mobile broadband market would lead to lower prices, more choices, increased innovation, and better service for consumers. During the incentive auctions, a large amount of spectrum will change hands creating an unprecedented opportunity for the Commission to install policies to promote “vigorous economic competition” as required by statute.<sup>22</sup> To achieve this statutory goal, the Commission should design the forward auction so that firms beyond the largest incumbents have an opportunity to obtain spectrum – allowing for service enhancements and more effective competition.

Further, the Commission should free up as much unlicensed spectrum as possible. In the past, the Commission has correctly recognized unlicensed spectrum as an instrument of innovation.<sup>23</sup> Beyond that, unlicensed spectrum provides an opportunity for communities of color to create and provide their own efficient and cost effective services, introducing the possibility of ownership and control without the formidable barriers to entry that exist in the mobile broadband market.<sup>24</sup> Maximizing the availability of unlicensed spectrum would confer benefits upon consumers and, particularly, communities of color that still lag behind others in ownership, and broadband usage and adoption.

Finally, NHMC makes note of the Commission’s proposal to use bidding credits in the forward auction as a way to increase participation by firms owned by women and people of color.<sup>25</sup> While NHMC recognizes that bidding credits could increase the participation of smaller

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<sup>22</sup> 47 U.S.C. § 257.

<sup>23</sup> News Release, Federal Communications Commission, FCC Chairman Julius Genachowski announces major effort to increase Wi-Fi speeds and alleviate Wi-Fi congestion at airports, convention centers, and in homes with multiple devices and users, (January 9, 2013), *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0109/DOC-318326A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0109/DOC-318326A1.pdf).

<sup>24</sup> See Letter from Rural Broadband Policy Group to Representatives Walden and Eshoo (July 22, 2011), *available at* <http://accesshumboldt.net/site/access-humboldt-supports-community-use-unlicensed-spectrum>.

<sup>25</sup> NPRM at ¶¶ 293-295.

competitors, thus increasing competition in the market, it is less clear whether this method will actually lead to increased ownership by women and people of color. If the Commission has data that could offer clarity here, it should make such data available for public comment in this docket and solicit more detailed comment on its bidding credit proposal.

### **III. The Commission Should Conduct The Repacking And Transition Process In A Way That Minimizes Burdens For Remaining Broadcasters And, More Importantly, Communities That Rely On Broadcast Television**

If not planned properly and executed carefully, the repacking process and the transitioning of remaining stations to new channels could harm both non-participating broadcasters and communities that rely on OTA television. Further, if the Commission is not fully transparent about the impending repacking and the burdens that broadcasters will have to bear as a result, many could exit the market simply to avoid the perceived financial impact, giving no weight to whether or not they actually want to stay in the broadcasting business.

First, the Commission should engage multiple stakeholders to participate in public education. Such efforts will be necessary to ensure that television viewers do not experience service disruptions after the transition of remaining broadcasters to new channels. The Commission should not assume that this effort would require less consumer education than the transition from analog to digital television simply because viewers are not required to purchase new hardware to ensure continued service. The Commission proposes that “all stations changing channel assignments as a result of the reverse auction or repacking be required to conduct consumer education including airing viewer notifications and submitting a report to the Commission on their consumer education efforts.”<sup>26</sup> NHMC agrees with this proposal and believes that it should extend to all broadcasters, including those exiting the market and those

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<sup>26</sup> NPRM at ¶ 62.

remaining, and not just those changing channel assignments. NHMC also urges the Commission to engage other stakeholders, like community-based organizations, that were instrumental to the success of the DTV transition. The Commission should begin these efforts immediately by holding meetings and workshops with stakeholders and developing educational materials to ensure that all potential issues are fully considered and the public is educated by the time the transition occurs.

Second, the Commission should make special efforts to eliminate burdens that repacking could place on remaining broadcasters. The Commission has rightfully identified some ways to do this in the NPRM, such as making efforts to preserve coverage area and population served and allowing broadcasters to seek estimated relocation costs up front.<sup>27</sup> NHMC is supportive of these efforts. The Commission should also make special efforts to describe the repacking process to owners of smaller stations during its outreach and education efforts. The Commission should be especially sensitive to concerns that these stations have about the financial impact of repacking on non-participating stations.

## **CONCLUSION**

Wherefore, NHMC respectfully requests that the Commission accept the recommendations herein.

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<sup>27</sup> NPRM at ¶¶ 92, 334-349.

Respectfully Submitted,

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